

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	CRIMINAL ACTION FILE
)	NO. 1:06-CR-147-WSD-2
v.)	
)	ATLANTA, GEORGIA
EHSANUL ISLAM SADEQUEE (2))	
)	
Defendants.)	
_____)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WILLIAM S. DUFFEY, JR.,
UNITED STATES DISTRICT JUDGE

Tuesday, May 26, 2009

APPEARANCES OF COUNSEL:

For the Plaintiff:	OFFICE OF THE U.S. ATTORNEY
	(By: David E. Nahmias
	Robert C. McBurney
	Christopher Bly)
	DEPARTMENT OF JUSTICE
	(By: Alexis L. Collins)
For Defendant Ahmed (1):	MARTIN BROTHERS
	(By: John Richard Martin)
For Defendant Sadequee (2):	GARLAND SAMUEL & LOEB
	(By: Donald Franklin Samuel)

*Proceedings recorded by mechanical stenography
and computer-aided transcript produced by*
NICHOLAS A. MARRONE, RMR, CRR
1714 U. S. Courthouse
75 Spring Street, S.W.
Atlanta, GA 30303
(404) 215-1486

1 Tuesday Afternoon Session

2 May 26, 2009

3 3:03 p.m.

4 -- -- --

5 P R O C E E D I N G S

6 -- -- --

7 (In open court:)

8 THE COURT: This is a hearing in the United States
9 v. Sadequee, which is Criminal Action NO. 06-CR-147. And
10 it's on Mr. Sadequee's renewed motion for pretrial release.

11 Would counsel please announce their appearances?

12 MR. MCBURNEY: Robert McBurney for the
13 United States, with the assistance of Ms. Collins and
14 Mr. Bly.

15 MR. SAMUEL: Don Samuel for Mr. Sadequee,
16 Your Honor.

17 THE COURT: All right. Good afternoon.

18 And good afternoon, Mr. Sadequee?

19 THE DEFENDANT: Good afternoon.

20 THE COURT: Well, let's try to frame the
21 issue. This is Mr. Sadequee's second request to be released
22 on bond.

23 Mr. Samuel, the statute 18 U.S.C. Section 3142 (e)
24 (3) (C), because this is an offense that qualifies under
25 subsection (C), thus the presumption under the statute is

1 that no condition or combination of conditions would
2 reasonably assure the appearance of the defendant or the
3 safety of the community, although that is a presumption that
4 is rebuttable by the defendant.

5 I have read everybody's submissions. I understand
6 the test that is required to be applied under the statute.

7 So it's Mr. Sadequee's motion. We will hear first
8 from you.

9 MR. SAMUEL: Good afternoon, Your Honor.
10 I appreciate you scheduling this on fairly short notice.

11 As you know, we have previously had a release
12 hearing, a detention hearing that was held must be going on
13 almost three years ago now, three and a half years ago.

14 Let me remind the Court, if I may, just for the
15 record, remind you just a little bit of the timeline of
16 events.

17 THE COURT: I have read the submission.
18 I understand the timeline. I have considered this already.

19 MR. SAMUEL: It is significant to the defense, and
20 one of the reasons we think that there is in essence a change
21 in circumstances, which the government protests we have not
22 been able to establish, the length of time that Mr. Sadequee
23 has now endured the solitary confinement at the United States
24 penitentiary --

25 THE COURT: Well, is it the length of time, or is

1 it the conditions?

2 I mean, we have addressed the conditions once
3 before.

4 The length of time is largely -- I mean, of course
5 I have only been in the case a shorter period of time than
6 Judge Cooper was, but as you know, I have spent an enormous
7 amount of time dealing with the multiple motions that have
8 been filed by the defendant, all of which I felt were
9 important and appropriate.

10 But a lot of this has been prolonged by two
11 things. One is the number of motions filed, and the second
12 is that we are dealing with classified information.

13 And, you know, the defendants, Mr. Ahmed and
14 Mr. Sadequee, their counsel, including you, proposed to me a
15 schedule which you told me when I first got into the case and
16 because of the procedures, especially because of the
17 classified information that was involved, would allow us to
18 schedule the trials only this summer, even though I told you
19 at that time that I wanted to move them up, but I was
20 persuaded by all the lawyers in the case, including you and
21 Mr. Wahid, that that wasn't possible.

22 So, you know, and after having had that discussion,
23 I clearly understood that that wasn't possible, because of
24 the nature of the case and the number of motions that were
25 pending.

1 I have entered over 250 pages of orders in this
2 case on the various motions that have been filed. So a lot
3 of this is just a processing that's been required, and that
4 there hasn't been any request for his release during the
5 whole time that this processing was going on, including at
6 the request of the defendants.

7 MR. SAMUEL: Well, let me respond first by making
8 sure the Court knows that we are not contending that the
9 Court has been procrastinating. Far from it. I mean, the
10 exact opposite, in fact. You have been going at a pace
11 that's keeping us all up at nights, so to speak. So this
12 motion is not --

13 THE COURT: I can go faster if you want.

14 MR. SAMUEL: If you do, you are going to have
15 less -- the work product will suffer.

16 But so don't assume that or read it into my
17 motion. If I said something that led to that, I didn't mean
18 it.

19 THE COURT: No, I'm not. What I'm saying is this
20 is a case --

21 MR. SAMUEL: That takes time.

22 THE COURT: This presumption arises under the
23 statute. The case does take time.

24 MR. SAMUEL: It does.

25 THE COURT: And there are two reasons for

1 that. One is the nature of the information, which I think
2 everybody has worked through not just thoughtfully, but has
3 worked through in a way that I thought was fair, I thought --
4 was fair to everybody, fair to the Court, fair to the
5 defendant, and fair to the government, as we dealt with
6 sensitive classified information.

7 So I am not sure -- and I'm convinced based upon
8 our prior discussion about the scheduling that if we had
9 tried to do it more quickly, the chances of there being an
10 incorrect ruling or unfairness to the parties was something
11 that was a risk, and that's why I agreed to the timetable.

12 MR. SAMUEL: And we don't disagree with the
13 timetable, Judge. That's what I want to emphasize. We are
14 not saying the Court is the cause of any problem here, nor
15 for that matter for the past six, eight months or almost a
16 year the government either.

17 Our concern here is not that someone is at fault
18 and therefore he should be released pending trial. Nor is it
19 a speedy trial problem; that motion has come and gone. Or we
20 are claiming that because of government procrastination or
21 the Court's overcrowded docket or whatever that we are
22 entitled to relief.

23 Regardless of why we have been here for three
24 years, we have been here for three years. Maybe it's the
25 necessity of the case. Maybe it's the fact that CIPA, you

1 know, puts somewhat intolerable burdens on everybody,
2 including the prosecutors. We have got all these other
3 agencies they need to deal with in order to take one small
4 step of progress.

5 But it's nobody's fault. The fact of the matter is
6 Mr. Sadequee remains in prison for three years having never
7 been convicted of a crime and we will now argue to you,
8 proffer to you, not posing any danger to the community or to
9 society, not posing any danger to any witnesses, and really
10 not posing any risk of flight.

11 The fact that he's been there three years is a
12 fact, and it is an undeniable fact. But let's not assign
13 blame anywhere, because it's irrelevant to why I think -- why
14 the defense contends he is entitled to bond.

15 It is true, as the government says, most cases
16 don't require three years. And this is not a particularly
17 complicated case. It has just lots of complicated procedural
18 hurdles we have to go through. I mean, the facts of the case
19 are not particularly complicated at all.

20 We have witnesses overseas, we have CIPA hearings
21 we have to go through, there are intriguing issues. But the
22 facts of the case are not complicated at all.

23 The fact that it takes three years to get through
24 it, though, shouldn't rest on Mr. Sadequee's shoulders, and
25 that's what we are contending.

1 For whatever reason, for whatever reason it takes
2 three years, we contend that is a factor that the Court
3 should consider strongly in deciding whether he should be
4 released pretrial.

5 THE COURT: But you are asking -- I mean, we are
6 two months from trial. You are asking at the time when
7 I think the circumstances are most acute for him either to
8 flee or to present a danger when he's on the cusp of being
9 tried on these very, very serious charges involving activity
10 which by its nature is activity that would present a harm to
11 the well-being if not the lives of people.

12 MR. SAMUEL: The allegations of the indictment
13 would certainly qualify for that, the nature of the crime
14 which is charged. I don't think that the facts and the
15 discovery and the evidence which has come to light in the
16 last three years would support that kind of belief.

17 THE COURT: But as you know, there was a video
18 taken of a very, very public set of places that has been
19 discovered in the course of the investigation, including in
20 places where none of us would have want it to be on
21 computers.

22 MR. SAMUEL: Your Honor, the so-called casing
23 video -- and I'm sure you have seen it by now; if not, it's
24 been described to you in sufficient detail. It is a series
25 of three or four five-second clips, pictures of the

1 White House, which you can every night on the NBC News,
2 CBS News or whatever news channel you watch.

3 Pictures of the Washington Monument. If you go on
4 YouTube you could find I would guess a million images of the
5 Washington Monument. Anybody could --

6 THE COURT: But that wasn't put in somebody's
7 travel log. That was in fact delivered to others.

8 MR. SAMUEL: But to what end? To what end? I
9 mean, the fact that Mr. Sadequee can take a cell phone and
10 take a picture of the Washington Monument and ended up
11 sending it to a website doesn't make him dangerous. It
12 simply doesn't.

13 I understand they have the presumption, I
14 understand the government has got the finger on the scale
15 here with the presumption. But that video, that casing
16 video, to compare -- to suggest, as I think the government
17 ultimately will do, that somehow that means Mr. Sadequee was
18 involved in going to blow up one of these buildings or was
19 going to attack one of these buildings, there is actually no
20 evidence to support that at all.

21 I don't even think the government believes that at
22 this point, that that casing video had anything to do,
23 anything to do with a suggestion that someone was going to
24 attack the buildings, anything, use whatever verb you want to
25 use.

1 THE COURT: No, the government has submitted in the
2 course of this case, which I have heard, is that that was how
3 he sought to gain credibility with these terrorist
4 organizations so that he might be accepted into a training
5 camp.

6 MR. SAMUEL: Well, I don't think that is
7 accurate. Maybe that's the government's view. I think there
8 is certainly another side to this case, which is that the
9 casing --

10 THE COURT: I'm not saying -- all I'm saying, look,
11 I'm basing this decision on a presumption that arises from a
12 statute passed by Congress.

13 MR. SAMUEL: Exactly.

14 THE COURT: And it's already been decided once that
15 at the time that he was denied bond in the past, that that
16 presumption was not overcome, which meant that at that time
17 he was found -- that there was insufficient evidence to show
18 that the presumption that he was a flight risk and a
19 presumption that he could harm the community did not warrant
20 allowing him under the circumstances of this case and the
21 criteria that you have to apply, to allow him to be
22 released.

23 Now, there has to be -- you would have to argue
24 that there is some fundamental change in the facts that now
25 the presumption is overcome. But I would submit to you that

1 the crimes charged are the same, that the weight of the
2 evidence, if anything, probably has developed some, I don't
3 think that it has eroded based upon my view and understanding
4 of the case now.

5 The history and the circumstances of the defendant
6 is that he still has substantial ties to people outside the
7 country. I sometimes get communication from those
8 substantial ties outside the country. So not only did I
9 understand that those existed, I now have had communications
10 with my chambers to show that.

11 And the nature and seriousness of the danger seems
12 to me to be the same, if not more aggravated, because we are
13 closer to trial and the ultimate outcome of the case, which
14 could be adverse to the defendant.

15 MR. SAMUEL: Well, let me address those in the
16 order in which you have raised them.

17 You mentioned we are on the cusp of trial before
18 and at the end of your -- just now. I'm not sure why being
19 closer in time to trial makes him more of a flight risk.

20 We don't believe he's a flight risk. We don't
21 believe the evidence supports the contention he's a flight
22 risk other than the presumption --

23 THE COURT: Because most of the people I've seen
24 that flee flee closer to trial when they are on bond than
25 flee immediately, at least has been my personal experience.

1 MR. SAMUEL: I don't have that much experience. I
2 have some flee just before closing argument, so it's true
3 that during the course of trial sometimes things aren't going
4 well. But I'm not sure that I would say I have done an
5 empirical study. Most people flee before they get caught I
6 think.

7 But at any rate, he's not the type of person who
8 would flee. His mother lives here, his sister lives here,
9 his other sister lives here, his brother lives here. You
10 have seen most of them in court time and time again, and I'm
11 sure they are here today as well.

12 He's lived here his entire life in Atlanta. He's
13 an American citizen, he's born here in the United States,
14 he's lived in Atlanta all but the first year or eighteen
15 months of his life.

16 THE COURT: All of that -- all of those facts are
17 the same as they were the last time this was heard.

18 MR. SAMUEL: I agree, there is no change of facts
19 with regard to his history of where he has lived all these
20 years and where his family lives. One of the other sisters
21 has now moved to Atlanta, so she lives here as well.

22 He does have a wife who lives in Bangladesh, and
23 she is on her way over here. So she will actually be in the
24 United States just before trial. We expect her to be a
25 witness at the trial.

1 And he's never lived in Bangladesh for any period
2 of time other than just before he was arrested in this
3 case. There is no suggestion that he went to Bangladesh as
4 part of flight. When he was in Bangladesh, he learned that
5 there was an investigation at that time, and did not flee
6 from there, did not leave his father's home, even though he
7 knew he was under investigation then. He did not try to go
8 undercover or something like that.

9 He's given all the indications, all the empirical
10 evidence at this point that he's not a flight risk. So all
11 we have -- all the government has going for it, all the
12 government has going for it is the presumption.

13 And we would suggest that given his family living
14 in the Atlanta area, again, sisters, mother, brother, given
15 that he's lived his whole life here, given that he's an
16 American citizen, he's obviously willing to relinquish his
17 passport -- I assume the government probably already has
18 it -- we believe that the presumption has been overcome with
19 regard to flight risk.

20 With regard to dangerousness, again, the casing
21 video you mentioned before, I don't believe the government
22 contends that the reason the casing video -- well, you did
23 acknowledge that it wasn't for purposes of this is a good
24 target, here is the White House in case you didn't know where
25 it was, or here is the Washington Monument or the Pentagon in

1 case anybody doesn't know where they are. It was instead
2 designed in part we believe the government evidence shows to
3 lend credibility not to himself as a terrorist at all, but
4 rather to lend credibility to a website that he and others
5 were working on.

6 It was actually a very scholarly web
7 site. Mr. Kohlmann testified about it last week, the Tibyan
8 website. It was a scholarly website that was involved
9 primarily in translating Islamic texts, some of which were
10 very opposed, for example, to LET.

11 The government never mentions that, that one of the
12 leading texts that Mr. Sadequee translated on the website was
13 showing why LET was bad, or LET is not an organization that
14 should be promoted by people with whom he associated because
15 of whatever religious or political reasons.

16 So what we have is really kind of quintessential
17 First Amendment activity at el-Tibia. I mean, the essence of
18 the First Amendment is the right to translate text, some of
19 which may be very unpopular, but to have a dialogue and to
20 have a website that has a dialogue. It is not revolutionary,
21 it is not promoting -- it's not yelling fire in a crowded
22 theater, he's not promoting any kind of overthrow of the
23 American government, but -- and for the most part it wasn't
24 even original -- actually for the most part almost invariably
25 it wasn't even original material written by

1 Mr. Sadequee. He's just a translator.

2 He is very scholarly, despite the fact that he
3 hasn't graduated from high school. He's fluent in Islamic,
4 he memorized the Quran, and he translates texts, some of
5 which are opposing viewpoints.

6 The casing video --

7 THE COURT: I'm not here to try the case.

8 MR. SAMUEL: I understand.

9 THE COURT: And everything that you have just said
10 existed the last time this motion was heard.

11 MR. SAMUEL: I agree with that.

12 THE COURT: What you are really looking for is a
13 different venue and a different decision from a different
14 person.

15 MR. SAMUEL: I will point out that we never
16 appealed Magistrate Brill's decision. So to some extent we
17 do have a right to appeal. We waited for three years, so we
18 are entitled --

19 THE COURT: So is this your appeal?

20 MR. SAMUEL: We would rather not view it like that
21 only because the standards change yet again, but -- and we
22 would rather rely on the new record.

23 But if I could just get back to -- I don't want to
24 try the case here, I don't want the government to hear me try
25 the case, I don't want to give a closing argument today.

1 But when you said that the casing video was
2 designed to enhance his credibility with terrorists, I think
3 that's not right, and I think the government -- maybe they
4 are standing or sitting behind me shaking their head, but
5 I think that the evidence shows that the casing video was
6 more designed to enhance the credibility of this website, so
7 that people would come to the website, so that scholars would
8 come to the website, so debates would be conducted on the
9 website, opposing views would --

10 THE COURT: But we know where it was found.

11 MR. SAMUEL: Well, yes, I agree.

12 THE COURT: It wasn't sent in the mail, it wasn't
13 sent by Federal Express. It was hidden in a piece of
14 luggage, wasn't it?

15 MR. SAMUEL: No, it was sent digitally to
16 Mr. Tsouli, and Mr. Khan had it. I mean, it got distributed
17 at some point.

18 But again when we are talking about distributed it,
19 it's not a whole lot different than if somebody took a
20 photograph of the Washington Monument, if you went and bought
21 a postcard of the Washington Monument and the Pentagon and
22 mailed it to all the most evil people on earth you could
23 think of, it's less than that. It's less than that.

24 It's a cell phone video of a couple monuments in
25 Washington without anybody suggesting let's attack these

1 buildings, let's bomb this building, let's do something
2 here. It's just --

3 THE COURT: Look, I have the benefit of having read
4 the transcripts, I have listened to the interviews, and I
5 know that somebody did not go to a book on Washington, D.C.,
6 and take pictures of the photographs. That there was --
7 I understand the circumstances under which -- and there is
8 something about that conduct that is different than it just
9 being simple pictures. It shows something about the mindset
10 of somebody and why they did what they did.

11 And I'm judging that only because the criteria
12 requires me to look at the history and characteristics of the
13 person and the nature and circumstances of the offense
14 charged. I'm not saying -- my view ultimately will be the
15 one that the trier of fact adopts. I'm dealing with a record
16 based upon my understanding of the case, applying the factors
17 on the limited issue of whether the presumption under the
18 statute is rebutted.

19 MR. SAMUEL: And we believe the presumption is
20 rebutted, because if all the government needs to do is list
21 the statute and say this is the crime with which you are
22 charged, if that's enough and the case is over, then we
23 wouldn't be before you today.

24 There has to be some right of the defendant to
25 contest the sufficiency of the evidence, contest the

1 sufficiency of the proof to rebut the presumption. Otherwise
2 there would be no need ever to have a hearing. They'd list
3 an indictment, they say this is the statute 2339 (A), case
4 over. We would never have a hearing, we would have never
5 been before Judge Brill.

6 So my right to argue to you that the casing video
7 borders on being juvenile, to being adolescent and not being
8 the slightest bit either designed or --

9 THE COURT: Well, let's not get hung up on my
10 observation about the video.

11 MR. SAMUEL: Okay.

12 THE COURT: I have studied through months the facts
13 of this case, through the deciding of multiple motions,
14 through the reading and listening to 13 hours' worth of
15 transcripts of interviews, and so I have a broad picture of
16 the nature of the offense and generally what the evidence is
17 that has been presented to me in the motions.

18 So we are not talking about a single video. That's
19 a piece that fits into everything else that I'm aware of
20 about the nature and circumstances of the offenses charged.

21 MR. SAMUEL: If you read the bill of particulars of
22 the government and what is the material support, it's the
23 video. I mean, it is the heart of this case is that
24 video. That is the heart of the government's case, it's that
25 and, you know, Mr. -- and Haris Ahmed going to Pakistan and,

1 you know, maybe he's going to join a training camp there or
2 maybe he's going to go to school, and ultimately says my
3 parents don't want me to train, to go to a training -- mommy
4 doesn't want me to go to a training camp, so I'm not going to
5 go.

6 That according to the bill of particulars is the
7 material support, it's Haris Ahmed going to Pakistan and
8 saying my mother doesn't want me to go, so he comes home when
9 asked to join a training camp, and this casing video.

10 So we can put those two to the side, but when we
11 put those two to the side, we have concluded our
12 investigation of the material support that this man is
13 alleged to have provided to anybody, either LET or any other
14 organization.

15 I mean, even if you look at the indictment, there
16 are things like he sent a casing video to Mr. Tsouli; okay?
17 That's what he does, undenied.

18 THE COURT: Look, Mr. Samuel, I understand all
19 that. That was a long time ago. I am dealing with that
20 information that has been brought to my attention and with
21 which I am now familiar as a result of being emersed in this
22 case for months. That's what I'm judging my understanding
23 and my application of the facts to the criteria that I'm
24 required to apply under 3142.

25 MR. SAMUEL: All I can do is address what the

1 government in their bill of particulars says this is what the
2 material support is.

3 All I'm responding to is the Court's suggestion
4 let's put the video casing clip aside. If we put it aside,
5 we put most of the government's case aside, because that's
6 what the government contends is the material support.

7 Conspiracy to provide material support and
8 providing material support. It's the casing video, and
9 Haris Ahmed flying to Pakistan and turning around and coming
10 home.

11 I can tell you a little bit more about
12 Mr. Sadequee's background, what he's done growing up in
13 Atlanta here. Again, his scholarly efforts to translate
14 various texts that he's been translating.

15 He's volunteered for peace organizations here in
16 Atlanta. He spent years volunteering for an agency known as
17 Raksha, which was a nonviolent organization, promoting
18 nonviolence among people from this community. He did
19 volunteer work with a number of other peace organizations
20 here in Atlanta.

21 He is not someone who poses a danger to the
22 community, he is not someone who poses a risk of flight,
23 given his family connections, the community support, and he's
24 not someone who we believe would violate in any way the terms
25 that the Court imposes for his release.

1 The fact that we are on the cusp of trial, perhaps
2 even more so the need for him to be out, for him to be able
3 to come to his attorney's office, for him to be able to meet
4 with the lawyers in this case, and painstakingly review the
5 various evidence, the evidence that you have reviewed, rather
6 than the three-hour time slots we get per week to visit him
7 at the United States penitentiary to review the
8 information --

9 THE COURT: Well, look, with all due respect, I
10 have made special accommodations. I have met with the warden
11 of the prison. If you want more time, let me know and I will
12 get you more time.

13 But nobody has -- you have never come to me and
14 said that the arrangements that I required the prison to make
15 are insufficient. And without you saying that it's
16 insufficient for you to meet with him and prepare -- you
17 know, I have authorized your co-counsel to go over and
18 conduct interviews in London, I have extended that trip.
19 I have authorized payment for you to sit through the trial of
20 Mr. Ahmed. I mean, I have done everything that you have
21 asked.

22 MR. SAMUEL: I have no complaints with the Court.

23 THE COURT: Well, then don't tell me that three
24 hours -- that you need more than three hours. If you need
25 more than three hours, I will make those arrangements. But

1 you have never said that before, Mr. Samuel.

2 MR. SAMUEL: I agree, I have never complained
3 about -- you have done, whatever it is, eleven -- 101 yards,
4 whatever the expression is, to help facilitate things at the
5 prison. And Mr. McBurney has also helped me enormously.

6 But we are still -- as far as contact visits go, we
7 either get Tuesday morning or we get Tuesday afternoon, or
8 Wednesday morning or Wednesday afternoon.

9 THE COURT: Well, if you are complaining about
10 that, I will fix that.

11 MR. SAMUEL: Well, I'm not complaining.

12 THE COURT: Well, yes, you are.

13 MR. SAMUEL: It's a reason why we should get bond,
14 it's a reason why. I would rather spend twelve hours a day
15 with him, like I do with most of my clients in preparation
16 for trial in the last two months --

17 THE COURT: I can arrange that too.

18 MR. SAMUEL: I don't want to spend that much time
19 in the prison, Your Honor. I would rather do it at my
20 office. If you could arrange that, that would be the perfect
21 arrangement.

22 At any rate, we believe we have overcome the
23 presumption with the information we supplied to the Court
24 with our proffer, and that conditions can be imposed by the
25 Court if you allow him to be released to assure the safety of

1 the community and that he's not a flight risk.

2 THE COURT: All right. Thank you.

3 Mr. McBurney?

4 MR. McBURNEY: Thank you, Judge. I will be brief
5 and answer the question I heard you ask several times.

6 The only thing that the government sees having
7 changed from Judge Brill's ruling, which replicated a ruling
8 by a district court judge in the Eastern District of New York
9 on less serious charges, a 1001, is that arguably factor two
10 of the four factors --

11 THE COURT: It doesn't -- I have never been
12 persuaded by somebody else exercising their discretion in
13 another district, that that's the way I will exercise my
14 discretion here. I have always exercised my discretion with
15 what I believe justice and law requires.

16 MR. McBURNEY: Different set of facts, more serious
17 charges here, I agree.

18 Factor number two, the weight of the evidence. I
19 think that's the only thing that has changed from the time
20 that Judge Brill ruled, and I believe that that factor now
21 weighs more strongly in the government's favor.

22 The facts are out there. There have been rulings
23 since then, initially by Judge Brill, but ultimately orders
24 issued by this Court that puts the government's case in a
25 stronger posture.

1 The defense, as you have noted, has filed any
2 number of motions legitimately seeking to suppress certain
3 things. Those motions have been denied.

4 And so now the government sits, unlike it did back
5 when Judge Brill ruled, knowing that certain things that are
6 damaging, prejudicial, but admissible evidence can come in at
7 trial.

8 That's the government's answer to your
9 question. Nothing else has changed.

10 Time has passed, but as the Court has noted, we
11 have worked with the Court's assistance in getting -- Court's
12 direction getting the Bureau of Prisons to accommodate the
13 needs of Defendant Sadequee as we hear about them, and I have
14 heard of no new complaints from the last round of
15 conversations or communications we had with the Court that
16 resulted in ensuring family contact visits for the defendant,
17 regular contact legal visits, restoration of telephone
18 privileges and et cetera.

19 I haven't heard anything new. What I have heard is
20 he's been in prison for a long time, but you have already
21 documented how this has been moving along.

22 Finally, the last thing I would note -- I'm not
23 going to quibble with the factual statements, we don't need
24 to try the case right now, I don't agree with much of what
25 Mr. Samuel said about our case -- but we have agreed

1 consistent with our schedule to move the defendant's trial up
2 from the original very aggressive trial schedule that was set
3 because things changed in the calendar. So the government
4 remains willing to get Defendant Sadequee into court as soon
5 as is practicable.

6 The issue before Your Honor is what has changed
7 since Judge Brill issued her ruling. The answer is nothing
8 favorable to the defendant.

9 THE COURT: Mr. Samuel, would you like to respond?

10 MR. SAMUEL: I don't have a rebuttal to what he
11 said, no.

12 THE COURT: Well, as I have noted, I have been
13 immersed in this case. I have read a number of the
14 communications. I have a much more complete picture than I
15 had even two months ago from all of the information that I
16 have reviewed over the course of I guess the last six months
17 or so, maybe seven months.

18 And I have invested an enormous amount of time in
19 this case, and I believe I'm close to being up to speed with
20 all the -- with the parties themselves.

21 The nature and circumstances of this offense, I
22 note that the statute pays special attention to charges of
23 terrorism, that the maximum punishment authorized if there is
24 a conviction in this matter, and even the guideline range
25 that the government notes -- and I don't know, generally

1 I took a glance at the guidelines, but this is a very, very
2 significant case, if nothing else as reflected by the
3 authorized punishment and what I believe the guidelines
4 ultimately -- kind of where we would be ultimately in the
5 guidelines.

6 I disagree strongly with Mr. Samuel's view that
7 being closer to trial mitigates in favor of release. I have
8 been doing this work for 32 years. My experience in the
9 government and in my defense work is that if there is a time
10 when the anxiety and pressure of somebody facing a charge
11 like this causes them to do things which they otherwise might
12 not do, it's as they get closer to trial, and not as the
13 charges are initially brought against them.

14 I believe that the risk of flight and the risk of
15 danger to the community enhances in a case like this as you
16 get closer to the date of trial, which we have in fact moved
17 up at my request.

18 I do understand the weight of the evidence against
19 the defendant, because I have pored over it, and that
20 I understand I believe the evidence that has been presented
21 in the course of the multiple motions that I have had to
22 review and my review of the significance of the information
23 that is available to all of the parties in this case, and
24 believe that the weight of the evidence does not mitigate in
25 favor of rebutting the presumption.

1 The history and the characteristics, while there
2 are some laudable things apparently that the defendant has
3 done, that if you look at his conduct over the course of the
4 matter for which he was under investigation and his
5 philosophical commitment to the matters that are central to
6 this case, I believe that those are at most a neutral
7 factor.

8 And ultimately I believe that the nature and the
9 seriousness of the danger that he presents to the community
10 and his risk of flight is at this point in time
11 significant.

12 It is -- I don't know of any set of circumstances
13 in a case like this where I could in good conscience, even if
14 the presumption had been rebutted, which I find that it has
15 not, that I can't imagine any set of circumstances that would
16 allow me in good conscience, as somebody who has a
17 responsibility to the justice system and more importantly a
18 responsibility to the community, that would assure that he
19 would be here to defend against the charges that have been
20 brought against him so a just result can be returned and so
21 that, while we are awaiting that process, that the community
22 can in fact be kept safe.

23 And for that reason I am denying the motion.

24 Is there anything else that we need to discuss
25 while we are all together?

1 MR. MCBURNEY: No, sir, not from the government.

2 THE COURT: Mr. Samuel?

3 MR. SAMUEL: No, Your Honor.

4 THE COURT: All right. We will be in recess.

5 (Proceedings adjourn at 3:36 p.m.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

UNITED STATES OF AMERICA :
:
NORTHERN DISTRICT OF GEORGIA :

I, Nicholas A. Marrone, RMR, CRR, Official Court Reporter of the United States District Court for the Northern District of Georgia, do hereby certify that the foregoing 29 pages constitute a true transcript of proceedings had before the said Court, held in the city of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 28th day of May, 2009.

/s/ Nicholas A. Marrone

NICHOLAS A. MARRONE, RMR, CRR
Registered Merit Reporter
Certified Realtime Reporter
Official Court Reporter
Northern District of Georgia